IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1432 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Petitioner(s)

Versus

MANSURI RAJAKBHAI KASAMBHAI - Respondent(s)

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Appearance :
Mr. Hasit D. Dave, AGPfor Petitioner(s) : 1 - 2.
MR SP MAJMUDAR for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/08/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India, the petitioners, State of Gujarat have challenged the legality and validity of the judgment and award passed by the Labour Court, Himatnagar dated 21.8.2004 in Reference (LCH) No.

147/1997 in partly allowing the said Reference directing the petitioners to reinstate the respondent workman without backwages but with continuity of service.

2. The respondent workman was serving as a daily-wager driver since 1986 and as and when work was available he was offered the work. The respondent-workman raised an industrial dispute by way of Complaint dated 1.8.1986 alleging inter alia that his services have been terminated with effect from 1.7.1992 without following any procedure as required under Section 25(F) of the The Industrial Disputes Act, 1947 {“the Act” for short} and/or without giving any opportunity and/or without holding any enquiry and the said dispute was referred to the Labour Court, Himmatnagar for its adjudication being Reference (LCH) No. 147 of 1997. The said Reference was resisted by the petitioners by submitting that the respondent workman was unauthorisedly absent since 1.7.1992 who had himself voluntarily abandoned the job and/or not reported for duty after 1.7.1992 and therefore there was no question of retrenchment by the petitioners as alleged. It is also submitted on behalf of the petitioners that time and again after 1.7.1992 the respondent-workman was directed to report for duty but he had not reported for duty and hence this case being the clear case of voluntary abandonment of service he has requested to dismiss the Reference. The Labour Court observing that as before terminating the services on the ground of

unauthorised absenteeism no departmental enquiry was initiated and held that as the respondent workman was terminated orally, partly allowed the said Reference by directing the petitioners to reinstate the workman without backwages however with continuity of service. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court dated 21.8.2004 in Reference (LCH) No. 147/1997, the petitioners have preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri Hasit D. Dave, learned A.G.P., has vehemently submitted that the respondent workman was serving as a daily-wager driver. He had not reported for duty after 1.7.1992 voluntarily and that it was a case of voluntary abandonment of service by the respondent workman and when inspite of the fact that number of reminders were sent to the respondent workman to report for duty after 1-7-1992 the respondent-workman did not report for duty and no intimation was sent by the respondent workman there was no question of initiation of any departmental enquiry as he himself had abandoned the job. He has submitted that the Labour Court has therefore materially erred in directing the petitioners to reinstate the respondent workman and that too with continuity of service. It is also further submitted that number of reminders were sent to the respondent workman to report for duty but the respondent workman did not report for duty and therefore there was no question of initiation of departmental enquiry more

particularly when the respondent workman was serving as a daily-wager driver. Therefore it is requested to allow the present Special Civil Application.

4. Shri S.P. Majmudar, learned advocate for the respondent workman has tried to support the judgment and award passed by the Labour Court, Himatnagar, by submitting that when the Labour Court on appreciation of evidence has held that oral termination of the respondent workman was illegal as no departmental enquiry was initiated before terminating the services of the respondent workman and when consequently the Labour Court passed an order directing the petitioners to reinstate the respondent workman and that too without backwages the same is not required to be interfered with by this Court in exercise of powers under Article 226/227 of the Constitution of India. It is therefore requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is not in dispute that the respondent workman was serving as a Daily-Wager. It is the case on behalf of the petitioners that after 1.7.1992 the respondent workman never returned for duty though number of reminders were sent and those reminders are produced before the Labour Court at Exhs. 23 to 38 the respondent workman did not report for duty. Under the circumstances, it is to be presumed that

the respondent workman has voluntarily abandoned the services. As held by the Hon'ble Supreme Court in the case of Delhi Transport Corporation Vs. Sardar Singh, 2004 III-LLJ Page 543 to remain absent without getting the leave sanctioned for a long period and from the action of not reporting for duties though directed to report for duty it is to be presumed that the workman is not interested in service and that when he has voluntarily abandoned the service departmental enquiry is not required to be held. In the present case, after 1.7.1992 the respondent workman did not report for duty though number of reminders were sent which are produced at Exhs. 23 to 38. Therefore, this case being a clear case of voluntary abandonment of service by the respondent workman, there was no question of holding any departmental enquiry by the petitioners as there was no retrenchment and/or dismissal by the petitioners. It is required to be noted that even the respondent workman raised the industrial dispute by way of Complaint after a period of 4 years, i.e., in 1996. Therefore, this is an additional ground to prove that the respondent workman was not interested in service and voluntarily left the service. Under the circumstances, the judgment and award passed by the Labour Court, directing the petitioners to reinstate the respondent workman on the ground that no departmental enquiry was initiated before dismissing the respondent workman, is absolutely illegal and contrary to the law laid down by the Hon'ble Supreme Court in the aforesaid case and the same cannot be

sustained.

7. For the reasons stated above, the petition succeeds. The judgment and award passed by the Labour Court, Himmatnagar in Reference (LCH) No. 147/1997 dated 21.8.2004 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent, however, with no order as to costs.

{M.R. Shah, J.}

RMR.